



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Ordinance No. 1792 Entitled, "An Ordinance of the Lodi City Council Repealing and Reenacting Chapter 5.32 of the Lodi Municipal Code Pertaining to Massage Establishments"

**MEETING DATE:** February 7, 2007

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1792.

**BACKGROUND INFORMATION:** Ordinance No. 1792 entitled, "An Ordinance of the Lodi City Council Repealing and Reenacting Chapter 5.32 of the Lodi Municipal Code Pertaining to Massage Establishments" was introduced at the regular City Council meeting of January 3, 2007.

**ADOPTION:** With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

  
Randi Johl  
City Clerk

RJ/JMP  
Attachments

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**APPROVED:**   
Blair King, City Manager

ORDINANCE NO. 1792

AN ORDINANCE OF THE LODI CITY COUNCIL  
REPEALING AND REENACTING CHAPTER 5.32  
OF THE LODI MUNICIPAL CODE PERTAINING TO  
MASSAGE ESTABLISHMENTS

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 5.32 is hereby repealed in its entirety and reenacted to read as follows:

CHAPTER 5.32  
MASSAGE ESTABLISHMENTS

Sections:

5.32.005	Findings and Purpose.
5.32.010	Definitions.
5.32.015	Operators Permit Required.
5.32.020	Application for Operator's Permit.
5.32.025	Operator's Permit: Issuance; Denial; Operation.
5.32.030	Massage Technician's Permit.
5.32.035	Application for Massage Technician's Permit.
5.32.040	Massage Technician's Permit: Issuance; Denial; Operation.
5.32.045	Off-Premises Massage Permit.
5.32.050	Massage Establishment Facilities and Operations.
5.32.055	Change of Business.
5.32.060	Fees.
5.32.065	Exemption; Existing Permittees.
5.32.070	Transfer and Duration of Permits.
5.32.075	Suspension, Revocation, Denial, and Appeal.
5.32.080	Compliance with this Chapter.
5.32.085	Operation with Revoked Permit.
5.32.090	Massage Technician Compliance with this Chapter.
5.32.095	Violation and Penalty.
5.32.100	Unlawful Operation Declared Nuisance.

5.32.005 Findings and Purpose. The City Council finds and declares as follows:

A. The permit requirements and restrictions imposed by this Ordinance are reasonably necessary to protect the health, safety, and welfare of the citizens of the City of Lodi.

B. The City of Lodi is authorized, by virtue of the California Constitution and Section 51031 of the Government Code, to regulate massage establishments by imposing reasonable standards relative to the skill and experience of massage operators and massage technicians and reasonable conditions on the operation of massage establishments.

C. There is significant risk of injury to massage clients by improperly trained and/or educated massage technicians, and this Chapter provides reasonable safeguards against injury and economic loss.

D. Regulating the business of massage is necessary to preserve the health and safety of the individuals using or working in such establishments by regulating the sanitation and decency of such establishments, the maintenance of facilities, and by requiring the operator's compliance with applicable state law.

E. This Ordinance will also serve to reduce or eliminate the risk of illegal activity, which may result from a lack of regulation of massage establishments.

F. Issuance of a license to engage in the business of massage in the City of Lodi without adequate regulation would unduly jeopardize the health, morals, and welfare of the community.

#### 5.32.010 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

A. "Chief of Police." The Chief of Police of the City of Lodi, or his/her designated representative.

B. "City Manager." The City Manager of the City of Lodi or his/her designated representative.

C. "City Council." The City Council of the City of Lodi.

D. "Conviction"; "Convicted." A plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. "Client Area." Areas open to customers of the massage establishment.

F. "Health Department." San Joaquin County Public Health Services.

G. "Manager." The person(s) designated by the operator of the Massage Establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct, hire, or dismiss employees, control hours of operation, create policies or rules, or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5.32.030, et seq., to qualify as a manager and obtain a massage technician's permit.

H. "Massage." Any method of treating the external parts of the body for remedial, hygienic, relaxation, or any other reason or purpose, whether by means of pressure on, friction against, or stroking, kneading, tapping, pounding, vibrating, rubbing, stimulating, or other manner of touching the external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage.

I. "Massage Establishment." Any business conducted within the City of Lodi where any person, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on, or permits to be conducted or carried on, for money or any other consideration, any activity set forth in the definition of "Massage" in this section, and any establishment engaged in, carrying on, or permitting any combination of massage, baths, or health treatments involving massage or baths, shall be deemed a massage establishment.

J. "Massage Technician." Any person who administers to another person for any form of consideration whatsoever a "massage" as defined in this section. The term "massage therapist" and "massage practitioner" are included within this definition for purposes of this Chapter.

K. "Massage Technician's Permit." The permit required pursuant to the provisions of this Chapter for a Massage Technician.

L. "Operator." All persons who have ownership interest in the Massage Establishment and are responsible for its day-to-day operations.

M. "Operator's Permit." The permit required pursuant to the provisions of this Chapter to operate or manage a massage establishment.

N. "Owner." The individual(s) whose name appears on the City business license.

O. "Person." Any individual, corporation, partnership, firm, association, or other group or combination of individuals of whatever form or character.

P. "Recognized School." Any school or institution of learning, which teaches, through state certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with California Education Code Section 94310 or 94311, and which requires a resident course of study before each student shall be furnished with a diploma or certificate of graduation; or if said school is not located in California, has complied with the standards commensurate with those required in Section 94311 of the California Education Code. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.

Q. "Police Department." The Police Department of the City of Lodi.

R. "Employee." For purposes of this Chapter, the term "employee" shall include independent contractors.

S. "Moral Turpitude." A crime, which infringes upon the moral sentiment of the Community, as distinguished from acts prohibited by law.

#### 5.32.015 Operator's Permit Required.

A. No person shall operate a massage establishment within the City without first obtaining an operator's permit pursuant to Sections 5.32.020 and 5.32.025 of this Chapter, securing the necessary business license as required by this Code, and complying with Title 17 of this Code.

#### 5.32.020 Application for Operator's Permit.

Any person seeking an operator's permit for a massage establishment or manager's position for a massage establishment shall file a written application on the required form with the Police Department who shall conduct an investigation. The application shall be accompanied by a nonrefundable filing fee established from time to time by Resolution of the City Council to defray the cost of investigation required by this Chapter. The application shall be completed and signed by the operator or manager of the proposed massage establishment, if a sole proprietorship; one general partner, if the operator is a partnership; one officer or one director, if the operator is a corporation; and one participant, if the operator is a joint venture. The application for permit does not authorize operation of a massage establishment unless and until such permit has been properly granted. The application shall contain or be accompanied by the following information:

A. The type of ownership of the business; i.e., whether by individual, partnership, corporation, or otherwise. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent (5%) of the stock of that corporation. If the State of incorporation is outside of California, the corporation must be qualified to conduct business in California by the Secretary of State. If the applicant is a partnership, the application shall set forth the name and residence of each of the partners, including limited partners. If it is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such designated persons shall complete and sign all application forms required for an individual applicant under this Chapter, but only one application fee shall be charged.

B. The precise name under which the massage establishment is to be conducted.

C. The complete address and all telephone numbers of the massage establishment.

D. A description of any other business operated on the same premises, or within the City of Lodi, which is owned or operated by the applicant.

E. The following personal information concerning the applicant:

1. Full true name and all aliases used at any time by the applicant.
2. Current residence address and telephone number of the applicant. The previous residence addresses of the applicant, if any, for a period of eight (8) years immediately prior to the date of the application and the dates of residence at each.
3. Acceptable written proof that the applicant is at least eighteen (18) years of age.
4. Height, weight, color of hair, eyes, gender, and date and place of birth, unless the applicant is a partnership or corporation, in which case this information shall be supplied for the person or persons authorized to execute the application.
5. Two (2) front-faced portrait photographs at least two (2) inches by two (2) inches in size of the applicant taken within six (6) months of the date of the application.
6. The applicant's complete business, occupation, and employment history for the eight (8) years prior to the date of application, including, but not limited to, the massage or similar business history and experience of the applicant.
7. The name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation awarded to the applicant.

8. The complete massage permit history of the applicant; whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license, whether the permit or license was denied, revoked, or suspended; or if a vocational or professional license or permit was denied, revoked, or suspended; and the reason(s) therefore.
9. All criminal convictions, including pleas of *nolo contendere* and ordinance violations, within the ten (10) year period prior to the date of the application, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefore.
10. A complete set of fingerprints taken by the Police Department.

F. The name and address of the owner and lessor of the real property upon or in which the massage establishment is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and notarized acknowledgement from the owner of the property that a massage establishment will be located on the subject property.

G. Authorization for the City, its agents, and employees to verify the information contained in the application.

H. Such other identification and information as the Chief of Police may require in order to discover the truth of the matters specified and required to be set forth in the application.

I. A statement in writing and dated by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.

J. If, during the term of a permit, the permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department in writing of such change within ten (10) business days thereafter.

K. A statement as to whether the applicant intends at any time to employ more than two (2) massage technicians on-site performing massages simultaneously.

L. A statement as to whether the applicant intends to provide massage services off-premises.

#### 5.32.025 Operator's Permit: Issuance; Denial; Operation.

A. Issuance of Application. Upon receipt of the completed application, the Chief of Police shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. The sixty (60) day period may be extended for up to thirty (30) additional days by the Chief of Police, if necessary, to complete the investigation. Upon completion of the investigation, the Chief of Police shall grant the permit if he/she finds:

- (1) The required fee has been paid.
- (2) The applicant conforms in all respects to the provisions of this Chapter.

- (3) The applicant has not knowingly made any false, misleading, or fraudulent statements in the application.
- (4) The applicant has fully cooperated in the investigation of his or her application.
- (5) The applicant, if an individual, or any officers, directors, or shareholders of the corporation holding more than 5% of the stock, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct, which requires registration under California Penal Code Section 290, or of conduct violating Penal Code Sections 266, 314, 315, 316, 318, 647(a), and 647(b), or any felony offense involving the sale of a controlled substance as specified in Sections 11054, 11055, 11056, 11057, or 11058 of the Health & Safety Code or convicted of an attempt to commit any of the abovementioned offenses or convicted in any state of any offense, which if committed or attempted in this state, or conspiracy to commit any of the above offenses, would have been punishable as one or more of the abovementioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude.
- (6) The massage establishment, as proposed by the applicant, would comply with all applicable laws, including but not limited to zoning, fire, and safety requirements and standards.
- (7) The applicant is at least eighteen (18) years of age.
- (8) The applicant has not engaged in conduct, which would constitute grounds for suspension or revocation under this Chapter.

B. Denial. If an application is denied, the applicant may not reapply for a period of six (6) months from the date the application was denied.

C. Operation. All operators and managers of massage establishments shall comply with the following operating requirements and any conditions specified by the Chief of Police upon issuance of a permit:

1. Except to the extent required, in writing, by a state licensed medical practitioner, no massage technician or employee shall massage the genitals, gluteal fold, or anal area of any patron or the breasts of any female patron, nor shall any operator or manager of a massage establishment allow or permit such massage. No massage operator or designated manager while performing any task or service associated with the massage business shall be present in any room with another person unless the person's genitals, gluteal fold, anus, or the female breast(s), are fully covered.
2. No owner, operator, or manager will instruct or allow any person or persons to instruct or engage in, practice, or learn the art of massage on clients or other staff members at any massage establishment unless the owner, operator, or manager possesses a valid diploma or certificate of graduation from a recognized school and possesses a massage technician's permit issued by the City of Lodi.



3. No person granted a permit pursuant to this Chapter shall use any name or conduct business under any designation not specified in his or her permit.
4. All massage establishments required to be licensed under this Chapter shall have a manager on the premises at all times that the massage establishment is open. The operator of each massage establishment shall file a statement with the Chief of Police designating the person or persons with power to act as a manager. The operator and/or on duty manager shall post, on a daily basis, the name of each on duty manager and each on duty massage technician in a conspicuous public place in the lobby of the massage establishment. The operator, or the manager in the operator's absence, shall be responsible for ensuring compliance with this Chapter.
5. No licensed massage establishment shall be open for business without having at least one massage technician holding a current valid permit for the specific establishment on the premises, and on duty, at all times when said establishment is open.
6. The operator, designated manager(s) shall ensure the massage technician's permit for each on-duty massage technician is conspicuously displayed in a public place in the lobby and that each massage technician is wearing or has on their person the identification required by Section 5.32.040(C)(3) at all times when in the massage establishment is open. Such identification shall be provided to City regulatory officials upon demand.
7. An operator and/or on duty manager shall be responsible for the conduct of all employees while the employees are on the premises. Any act or omission of any employee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's permit shall be revoked, suspended, denied, or renewed.
8. No operator or manager shall employ any person as a massage technician who does not have a valid massage technician's permit issued pursuant to this Chapter. Every operator or manager shall report to the Chief of Police any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the Chief of Police. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within five (5) days of the date of hire or termination. The operator shall deliver the permit and photo identification card of any massage technician no longer employed by the operator to the Chief of Police within five (5) days of the termination of employment.
9. All persons employed in the massage establishment shall be fully clothed at all times. Clothing shall be a fully opaque, non-transparent material and shall provide complete covering from mid-thigh to no more than three (3) inches below the collar bone, and provide complete coverage of the genitalia and female breasts.



10. The operator shall comply with all provisions of this Chapter and any applicable provisions of the Lodi Municipal Code.
11. No operator, owner, massage technician, or other employee shall have on the premises: 1) any videos, pictures, or magazines depicting pornographic material; 2) condoms; or 3) other sexual devices.
12. All persons employed at any massage establishment must be a United States citizen or be a lawful resident of the United States pursuant to Title 8 of the United States Code.

5.32.030 Massage Technician's Permit.

No person shall perform or administer a massage, or advertise to provide massage services in the City of Lodi, unless such person has in effect a valid massage technician's permit issued pursuant to Sections 5.32.035 and 5.32.040 of this Chapter, and securing the necessary business license as required by this Code.

5.32.035 Application For Massage Technician's Permit.

A. Any person seeking a massage technician permit shall file a written application on the required form with the Police Department, which shall conduct an investigation. The application shall be accompanied by the appropriate filing fee established from time to time by resolution of the City Council to defray the cost of investigation required by this Chapter. The application shall contain or be accompanied by the following information:

1. A statement of the location at which the applicant will be working as a massage technician, including the full street address and all telephone numbers associated with said location;
2. Full true name and all aliases used at any time by the applicant, along with current residence address and telephone number;
3. All previous residential addresses, if any, for a period of eight (8) years immediately prior to the application and the dates of residence at each;
4. Acceptable written proof that the applicant is at least eighteen (18) years of age;
5. Height, weight, color of hair and eyes, gender, and date and place of birth;
6. Two (2) front-faced portrait photographs at least two (2) inches by two (2) inches in size of the applicant taken within six (6) months of the date of the application;
7. The business, occupation, and employment history of the applicant for the eight (8) years prior to the date of the application;
8. The complete permit history of the applicant, including whether the applicant has ever had any license or permit, issued by any agency, board, city, or other jurisdiction, denied, revoked, or suspended and the reason(s) therefore.

9. All criminal convictions, including pleas of *nolo contendere* and ordinance violations, within the ten (10) years prior to the date of the application, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding minor traffic violations, and the date and place of each such conviction and reason therefore.
  10. A complete set of fingerprints taken by the Police Department.
- B. Such other information and identification as the Chief of Police may require in order to discover the truth of the matters specified and required to be set forth in the application.
- C. Authorization for the City, its agents, and employees to verify the information contained in the application.
- D. A statement in writing, and dated, by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct.
- E. If, during the term of a permit, a permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the Police Department in writing of such change within ten (10) business days thereafter.
- F. Each applicant must furnish an original or certified copy of a diploma or certificate and certified transcript of graduation for completion of 200 hours of instruction from a recognized school.
1. The Chief of Police may consider an applicant's study of massage completed outside the State of California if proof of completion from a formalized course of study in massage practice, anatomy, and/or physiology is provided with the application. Proof of completion shall include dates of study and the name, address, and phone number of the school attended.
  2. Any outside course of study submitted for approval shall meet the State of California's Office of Post-Secondary Education's minimum requirements and applicant shall have completed 200 hours of training.

5.32.040 Massage Technician's Permit: Issuance; Denial; Operation.

A. Issuance. The Chief of Police shall have sixty (60) days to investigate the application and the background of the applicant, including, but not limited to, any past criminal convictions as provided by the Justice Department or other legally authorized agency. The sixty (60) day period may be extended for up to thirty (30) additional days by the Chief of Police, if necessary, to complete the investigation. Upon completion of the investigation, the Chief of Police shall grant the permit if, in addition to the finding that the applicant will work in a massage establishment, which complies with Section 5.32.050 of this Chapter, the following requirements have been met:

- (a) The applicant has graduated from a recognized school of massage prior to issuance of the permit and furnished an acceptable diploma or certificate of graduation.
- (b) The applicant has not had a massage establishment permit or massage technician's permit or other similar license or permit denied or revoked for cause by a licensing authority or by any city, county or state within three (3) years prior to the date of application.
- (c) The applicant has met the following requirements:

- (1) Completed two-hundred (200) hours of instruction in a massage specialty (therapeutic approach) at a recognized school of massage; or
- (2) Completed two-hundred (200) documented hours of practical experience in a massage specialty at:
  - (i) a primary office of and under the direct supervision of a medical professional licensed by the State of California, specifically a physician, surgeon, chiropractor, osteopath, physical therapist or nurse, while such medical professional is performing activities encompassed by such license and is physically on the premises where the massage therapy is being administered; and
  - (ii) 200 additional hours of continuing education classes or seminars in the field of massage therapy offered by a recognized school of massage.
- (d) The applicant has not been convicted of any of the offenses listed in Section 5.32.025(A)(5) within the last five (5) years.

B. Denial. If the application is denied, the applicant may not reapply for a period of six (6) months from the date the application was denied.

C. Operation. All massage technicians shall comply with the following conditions and any other conditions specified by the Chief of Police on issuance of the massage technician's permit.

1. Except to the extent required, in writing, by a state licensed medical practitioner, no massage technician, massage technician aide, or employee shall massage the genitals, gluteal fold, or anal area of any patron or the breast(s) of any female patron. No massage technician, massage technician aide, or employee, while performing any task or service associated with the massage business, shall be present in any room with another person unless the person's genitals, gluteal fold, anus, or female breast(s) are fully covered.
2. No massage technician shall massage any patron unless the person's genitals, gluteal fold, anus, or female breast(s) are fully covered at all times while the technician or other employee is present in the same room as the patron.
3. The massage technician shall wear or have on their person a photo identification card prepared and issued by the City at all times when present in the massage establishment, or have the photo identification card posted in a conspicuous location within the room in which the massage technician will perform a massage. Such identification shall be provided to City regulatory officials upon demand. If a massage technician changes his or her business address, he or she shall, prior to such change, obtain from the Chief of Police a new photo identification card and advise the Police Department, in writing, of the new business address.

4. Massage technicians shall not perform any massage at any location other than the location specified on the permit, unless performing an off-premises massage pursuant to permit and this Chapter.
5. While on duty the massage technician shall not use any name other than that specified on the photo identification card.
6. Massage Technicians shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide complete covering from mid-thigh to no more than three (3) inches below the collarbone and shall completely cover the genitalia and female breast(s).
7. The massage technician consents to the inspection of the massage establishment by the City's Building and Safety, Fire Department, and Police Department and the Health Department for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met. The massage technician consents to the inspection of the occupied massage rooms by the Police Department for the purpose of determining that the provisions of this Chapter are met upon occurrence of any of the conditions described in Section 5.32.050(B)(18), which would require the posting of the Notice of All Patrons as described therein.

#### 5.32.045 Off-Premises Massage Permit.

A. For purposes of this Chapter, a massage performed or administered off-premises and requiring an off-premises massage permit shall be one performed or administered for money or any other consideration by a licensed massage technician at a location other than a massage establishment.

B. No person shall perform or administer a massage off the premises of a massage establishment, for money or any other consideration, without obtaining a massage technician permit under Sections 5.32.035 and 5.32.040 in conjunction with a valid operator's permit and an off-premises massage permit under this Chapter. Any person desiring an off-premises massage permit shall file a written application on the required form with the Police Department, which shall conduct an investigation. The applicant shall accompany the application with the appropriate filing fee. The application shall contain or be accompanied by the following information:

1. The complete name, including all aliases used at any time, residence and business address, and telephone number of the applicant.
2. The precise name and complete address and telephone number of each person receiving the off-premises massage.
3. The complete address at which the off-premises massage is to be conducted.
4. The specific reasons necessitating the performance of the massage at a location other than a massage establishment. If the off-premises massage is to be conducted at a commercial business during normal business hours while patron remains fully clothed, a letter from the commercial business confirming these conditions shall accompany the application.
5. Such other information deemed necessary by the Chief of Police.

C. Upon receipt of a written application for an off-premises massage permit, the Chief of Police shall initiate an investigation to ascertain whether such permit should be issued as requested. Within ten (10) days of the filing of an application, the Chief of Police shall approve, conditionally approve, or deny the application. The Chief of Police shall issue the permit unless he or she finds that it is not reasonably necessary to perform or administer the massage at a location other than the massage establishment. The Chief of Police may specify conditions of the issuance of the off-premises massage permit that are reasonably necessary to ensure compliance with this Chapter, City ordinances, and applicable state law.

An off premises permit for chair massage only shall be valid for a period of one (1) year. Chair massage is where a patron received a massage while fully clothed in a public or semi public area. The areas massaged are the head, neck, back, and arms only.

#### 5.32.050 Massage Establishment Facilities and Operations.

##### A. Facilities.

1. Structure. Massage shall be carried on in a structure, which is located in a zoning district which permits such use. When a new massage establishment is constructed, three (3) sets of plans shall be submitted to the City of Lodi Community Development Department for approval and shall be accompanied by the appropriate fees. The structure must comply with all applicable provisions of Chapter 15 and 17 of this Code.
2. Signs. Subject to applicable provisions of this Code, each operator shall post and maintain, adjacent to the main entrance and the front of the business, a legible sign identifying the premises as a massage establishment. Each operator and/or duty manager shall display the operator's permit in a conspicuous public place in the lobby of the massage establishment. The hours of operation of the establishment must be posted in the front window and clearly visible from the outside. The operator and/or on duty manager must also post, on a daily basis in a conspicuous public place in the lobby of the establishment, the name of the operator and/or on duty manager.
3. Services List. Each operator shall post and maintain a list of services available and the cost of such services in a conspicuous public place within the premises. No operator or responsible managing employee shall permit, and no massage technician shall offer to perform, any service other than those posted.
4. Lighting and Ventilation. Each operator shall provide in each room where massage is given sufficient lighting and ventilation that complies with the Uniform Building Code.
5. Toilet and Wash Basin Facilities. A minimum of one (1) toilet and one (1) wash basin shall be provided for patrons in each massage establishment, which wash basin shall provide soap or detergent and hot and cold running water at all times and shall be located within close proximity to the area devoted to the performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser shall be provided at the wash basin. Bar soap shall not be in the washroom. A trash receptacle shall be provided in each toilet room.

6. Maintenance. All facilities of the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized each day the business is in operation. All walls, floors, and ceilings of each restroom shall be made smooth and easily cleanable. No carpeting shall be installed in restrooms.
7. Massage Table. A massage table shall be provided in each massage room and the massage shall be performed on the massage table. The tables shall have a minimum height of eighteen (18) inches. Two (2) inch thick foam pad with a maximum width of four (4) feet and must be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses, and waterbeds shall not be on the premises.
8. Linen Storage. Closed cabinets shall be provided and utilized for storage of clean linens and towels. Receptacles shall be provided for the deposit of soiled linens and towels.

B. Operations.

1. Equipment. Each operator and/or duty manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.
2. Inspections. The operator and/or duty manager consents to the inspection of the massage establishment by the City's Community Development Department, Fire Department, and Police Department and the County Health Department for the purpose of determining that the provisions of this Chapter or other applicable laws or regulations are met.
  - a. The City's Community Development Department, Fire Department, and Police Department and the County Health Department may, from time to time, make an inspection of each massage establishment for the purpose of determining that the provisions of this Chapter, State law, or other applicable laws or regulations are met. The Police Department may inspect the occupied massage rooms for the purpose of determining that the provisions of this Chapter are met upon occurrence of any of the conditions described in Section 5.32.050(B)(18), which would require the posting of the Notice To All Patrons as described therein. During an inspection, the Police Department may verify the identity of all on-duty employees.
  - b. Inspections of the massage establishment shall be conducted during business hours unless it appears that the massage establishment is operating after the posted hours of operation.
  - c. All areas located within or attached to the massage establishment are subject to inspection. Searchable areas include but are not limited to massage rooms, bath and/or restrooms, closets, offices, cabinets, drawers, kitchens, basements, garages, and lobby areas.
  - d. Any massage establishment that offers services other than massages, such as, but not limited to a tanning studio, acupuncture, mud baths, or nail salon is subject to inspection if these services share the same building and are accessible from the massage establishment.

- e. A person who operates a massage establishment or his or her agent, servant, or employee shall permit a lawful inspection of the premises by a representative of the Police Department at anytime it is occupied or open for business.
- 3. Towels and Linens. Towels and linens shall not be used on more than one (1) patron until they have been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron.
- 4. Living Prohibited. No person or persons shall be allowed to live inside the massage establishment at any time. All living quarters shall be separate from the massage establishment. No food of any kind shall be prepared for sale or sold in the establishment unless an appropriate food-vending permit has been issued.
- 5. Alcoholic Beverages/Drugs. Massage establishment personnel shall not sell, serve, or furnish alcoholic beverages in the massage establishment unless the massage establishment has a valid license issued by the State of California, Alcoholic Beverage Control (ABC). Alcoholic beverages shall not be consumed, and massage establishment personnel must not allow a person to consume an alcoholic beverage in a massage establishment unless the establishment has complied with all applicable ABC requirements and the person consumes the alcoholic beverage in designated areas away from any rooms where massage services are performed. Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the controlled substance.
- 6. Recordings. No electrical, mechanical, or artificial device shall be used by the operator or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage, or the conversation or other sounds in the massage rooms without the knowledge or consent of the patron.
- 7. Roster. The owner, operator, or on duty manager of the massage establishment shall keep a complete and current list of the names and residence addresses of all massage technicians and employees of the massage establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage establishment. This roster shall be kept on the premises and be available for inspection by any official of the City charged with the enforcement of this Chapter.
- 8. Coverings. Each massage establishment shall provide to all patrons clean, sanitary, and opaque coverings capable of covering the patrons including the genitals, gluteal fold, anus, and female breast(s). No common use of the coverings shall be permitted and re-use is prohibited unless the covering has been laundered and disinfected.
- 9. Hours of Operation. The owner must advise the City, in writing, at the time of the application for a permit of the business hours and any changes in hours. No person shall operate a massage establishment or administer a massage in any massage establishment or administer a massage pursuant to an off premises massage permit between the hours of 10:00 p.m. and 6:00 a.m. A massage begun any time before 10:00 p.m. must nevertheless terminate at



10:00 p.m. Except during the hours of operation, all customers, patrons and visitors shall be excluded from the massage establishment. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside. It is unlawful for a massage to be conducted, or for the massage establishment to be open, between the hours of 10:00 p.m. and 6:00 a.m.

10. Advertising. No massage establishment granted a permit under this Chapter shall place, publish, or distribute or cause to be placed, published, or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers or clients that any service is available other than those described in this Chapter, nor shall any massage establishment employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this Chapter. This subparagraph (10) is regulatory only.
11. Insurance. The owner or operator must provide worker's compensation insurance to all employees pursuant to California Labor Code Sections 3710.1 and 3710.2. The massage establishment will be immediately closed pending verification of worker's compensation insurance with the California Labor Commission. This Section does not apply to an owner or operator who does not have employees.
12. Handicapped Access. All massage establishments must comply with all State and Federal laws and regulations for handicapped customers.
13. Compliance. Proof of compliance with all applicable provisions of the City of Lodi Municipal Code shall be provided upon request to any officials of the City charged with enforcement of this Chapter.
14. Doors. All front, reception, hallway, massage room doors, and exterior doors used by patrons to gain access to the establishment shall remain unlocked during business hours. No massage may be given within any cubicle, room, booth, or any area within a massage establishment, which is fitted with a door capable of being locked, unless the only door is an exterior door. No door to any room shall be obstructed by any means.
15. Access. No person(s) other than valid permit holders under this Chapter and patrons shall be allowed anywhere in the massage establishment other than the lobby/reception area during hours of operation.
16. Loitering. Any persons convicted of any violations specified in Section 5.32.025(A)(5) in this Chapter or who have been denied a permit from the City of Lodi will be forbidden to work, loiter, volunteer, or be present on the premises of any massage establishment.
17. Discrimination. No massage establishment may discriminate or exclude patrons on the basis of race, sex, religion, age, or physical disability.
18. Notices. The Chief of Police shall require the following notice be posted in the event that any employee of the massage establishment or any person who has been aided and abetted by an employee of the massage establishment has been found, after full hearing by administrative proceeding or State Court, to have violated any of the provisions listed in Section 5.32.025(C) or 5.32.040(C):

NOTICE TO ALL PATRONS  
THE MESSAGE ESTABLISHMENT AND THE MESSAGE ROOMS DO  
NOT PROVIDE COMPLETE PRIVACY AND ARE SUBJECT TO  
INSPECTION BY THE LODI POLICE DEPARTMENT WITHOUT  
PRIOR NOTICE.

- a. The notice set forth above shall be prepared and issued by the Chief of Police. The expense incurred for the notice will be paid by the operator.
- b. The notices shall be conspicuously posted in a location within the massage establishment that is easily visible to any person entering the premises and in each room. The notice shall be posted for twelve (12) months following the violation of any of the offenses described above.
- c. The requirement for posting the notice described in this Section is cumulative and in addition to all other remedies, violations, and penalties set forth in this Chapter, or in the ordinance, laws, rules, or regulation of the City of Lodi, County of San Joaquin, and the State of California.

5.32.055 Change of Business.

A. Every massage establishment operator shall report immediately to the Police Department any and all changes of ownership or management of the massage establishment, including, but not limited to: changes of manager or other person principally in charge; stockholders holding more than five percent (5%) of the stock of the corporation; officer, directors and partners in any and all changes of name, style, or designation under which the business is to be conducted; and all changes of address or telephone numbers of the massage establishment. A change of location of the massage establishment will be approved by the Chief of Police provided there is compliance with all applicable regulations of the City of Lodi.

5.32.060 Fees.

A. The City Council shall establish by resolution, and from time to time may amend, the fees for the administration of this Chapter. Fees required by this Chapter shall be in addition to any required under any other chapter of this Code.

5.32.065 Exemption; Existing Permittees.

A. The provisions of this Chapter shall not apply to the following classes of individuals or groups while engaged in performing the duties of their respective professions: Exemptions do not apply to employees unless: 1) the conduct of the employee is regulated by state law pertaining to physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists, and 2) the employee and employer are performing their duties in accordance with state law.

- (a) Physicians, surgeons, chiropractors, osteopaths, acupuncturists, and physical therapists duly licensed to practice in the State of California.
- (b) Hospitals, nursing homes, sanitariums, or other health care facilities duly licensed by the State of California, provided that all times such physicians, surgeons, chiropractors, osteopaths, and physical therapists are acting in adherence with the provisions of the state law which govern this field.

- (c) Nurses duly registered by the State of California.
- (d) Barbershops and beauty parlors, barbers, and beauticians when engaged in the practice for which they are licensed by the State of California.
- (e) Accredited high schools and colleges and coaches and trainers employed therein while acting within the scope of their employment.
- (f) Trainers of any amateur, semi-professional or professional athlete, or athletic team.

B. Commencing on the effective date of this Ordinance, all permits are to be issued in accordance with the provisions of this Chapter.

C. The provisions of this Chapter shall be applicable to persons engaged in the businesses regulated by this Chapter prior to the effective date of this ordinance, and to persons employed as massage technicians prior to the effective date of this ordinance. Notwithstanding any other provision of this section, such persons shall file for the permits required by this Chapter within 180-days from the effective date of this ordinance. Failure to do so shall make the continued operation of the businesses or the continued employment as a massage technician a violation of this Chapter.

#### 5.32.070 Transfer and Duration of Permits.

A. No Massage Technician permit issued hereunder shall be transferable to any other person or establishment, provided however, an additional location or change of location of a massage technician permit will be allowed upon prior written notice to the Chief of Police and payment of the appropriate fee.

B. Permits for massage operators, managers, and technicians shall be renewed every two (2) years provided that the permittees continue to meet the requirements set out in this Chapter.

C. Applications for renewing a permit required under this Chapter shall be filed with the Chief of Police before the expiration of the existing permit. Temporary permits will not be issued and a renewal application must be filed no later than sixty (60) days prior to the expiration of the existing permit to prevent a lapse of said permit.

D. Renewal applications shall include at a minimum, the information required on the initial application and such other information as may be required by the Chief of Police to update the information contained in the original permit application. The applicant shall accompany the application for renewal with the appropriate filing fee as set forth in Section 5.32.060 of this Chapter.

#### 5.32.075 Suspension, Revocation, Denial, and Appeal.

A. Violation and Non-Compliance. The Chief of Police may refuse to renew a permit or may revoke or suspend an existing permit on the grounds that the applicant or permit holder has failed to comply with the permit conditions or other requirements of this Chapter. If a suspended permit lapses during the suspension period, a new application must be made at the end of the suspension period. In any case, the applicant or permit holder shall have the right to appeal to the City Council in the time and manner set forth in this Chapter.

B. Revocation and Suspension of Operator's Permit.

1. The Chief of Police may revoke or refuse to renew an operator's permit if he or she makes any of the findings sufficient for denial of a permit under Section 5.32.025(A), Section 5.32.025(B), or upon any subsequent violation of any provision of this Chapter within one (1) year following prior suspension under subsection 2 below.
2. The Chief of Police may suspend an operator's permit for a period of thirty (30) days for each violation of Section 5.32.025 not listed above, Section 5.32.045(B), or Section 5.32.050.
3. The Chief of Police's decision to suspend or revoke a license upon two (2) or more violations during any twelve (12) month period as long as the elements of such violation can be proven by a preponderance of credible evidence.

C. Revocation and Suspension of Massage Technician's Permit.

1. The Chief of Police may revoke or refuse to renew a massage technician's permit if he or she makes any of the findings for denial of a permit under Section 5.32.040(A), 5.32.040(B) 1, 2, or 6, or upon any subsequent violation of any provision of this Chapter within one (1) year following a suspension under subsection 2 below.
2. The Chief of Police may suspend a massage technician's permit for a period of thirty (30) days for each violation of Section 5.32.040(B) not listed above, 5.32.045(B), or 5.32.050.
3. The Chief of Police may suspend or revoke a massage technician's permit upon two (2) or more violations of this Chapter, whether it resulted in a criminal conviction or not, during any twelve (12) month period as long as the elements of such violation can be proven by a preponderance of credible evidence.

D. Notice.

1. When the Chief of Police concludes that grounds for denial, suspension, revocation, or refusal to renew a permit exists, the Chief of Police shall serve the applicant or permit holder, either personally or by certified mail addressed to the business or residence address of the applicant or permit holder, with a Notice of Denial or Notice of Intent to Suspend, Revoke, or Refuse To Renew Permit. This Notice shall state the reason(s) for the proposed action, the effective date of the decision, the right of the applicant or permit holder to appeal the decision as set forth below, and that the decision will be final if no appeal is filed within the time permitted.

E. Appeal.

- A. Any applicant/permittee dissatisfied with the action of the Chief of Police or designee under this Chapter, may appeal such decision by delivering to the City Clerk not more than ten (10) days after the effective date of such decision, a notice of appeal, along with a brief description of the reasons therefore. The Clerk shall immediately forward such request to the City Manager for handling.

- B. The City Manager shall upon receipt of the appeal set the matter for hearing before a hearing officer. The hearing officer shall be an attorney or recognized mediator designated by the City Manager. The hearing shall be scheduled for not more than thirty (30) days after receipt of the appeal unless a longer time is requested or consented to by the appellant. The hearing shall not be conducted under the formal Rules of Evidence, but shall be subject to such standards of procedure and evidence as reasonable people would utilize in the conduct of serious business.
- C. The hearing officer shall, within fifteen (15) days of the conclusion of the hearing, make a written finding and decision, which shall be delivered to the City Manager and the appellant by first class mail.
- D. The decision of the hearing officer shall be final.

5.32.080 Compliance with this Chapter.

It is unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises in the City of Lodi, the application of massage or the operation of a massage establishment in violation of the terms and conditions of this Chapter.

5.32.085 Operation with Revoked Permit.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Lodi, the application of massage or the operation of a massage establishment if such person's permit has been revoked.

5.32.090 Massage Technician Compliance with this Chapter.

It is unlawful for any person to act as a massage technician in violation of the terms and conditions of this Chapter.

5.32.095 Violation and Penalty.

A. In addition to the revocation/suspension provisions of Section 5.32.075, violations of this Chapter may be enforced pursuant to the provisions of Chapter 1.08 of the Lodi Municipal Code. Violations of the provisions of this Chapter, unless otherwise noted, are prosecuted as misdemeanors. Those provisions of this Chapter deemed "regulatory only" are not enforceable by criminal proceedings.

5.32.100 Unlawful Operation Declared Nuisance.

Any massage establishment operated, conducted, or maintained contrary to the provisions of this Chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance. The City Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal, or enjoinder thereof, in the manner provided by law. The City Attorney shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such massage establishments and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this Chapter.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 7<sup>th</sup> day of February, 2007

  
\_\_\_\_\_  
BOB JOHNSON  
Mayor

Attest:

  
RANDI JOHL  
City Clerk

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State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1792 was introduced at a regular meeting of the City Council of the City of Lodi held January 3, 2007, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held February 7, 2007, by the following vote:

AYES:	COUNCIL MEMBERS – Hansen, Hitchcock, Katzakian, Mounce, and Mayor Johnson
NOES;	COUNCIL MEMBERS – None
ABSENT:	COUNCIL MEMBERS – None
ABSTAIN:	COUNCIL MEMBERS – None

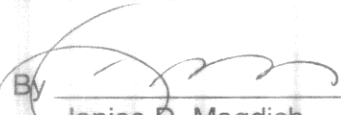
I further certify that Ordinance No. 1792 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



RANDI JOHL  
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER  
City Attorney

By   
Janice D. Magdich  
Deputy City Attorney